

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1394

AN ACT concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-10-1.1-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. (a) The state, through the budget agency, may adopt a defined contribution plan, under Section 401(a) of the Internal Revenue Code, for the purpose of matching all or a specified portion of state employees' contributions to the state employees' deferred compensation plan and for any additional purposes established by statute.

(b) The deferred compensation committee shall be the trustee of a plan established under subsection (a) as described in section 4 of this chapter. A plan established under subsection (a) shall be administered by the auditor of state as described in section 5 of this chapter.

(c) The deferred compensation committee may approve funding offerings for a plan established under subsection (a), which may be the same as offerings for the state employees' deferred compensation plan. All funds in each plan shall be separately accounted for but may be commingled for investment purposes.

(d) Contributions to a plan established under subsection (a) are limited to the amount of biennial appropriations the budget agency determines are available for any such purposes. The deferred compensation committee may use funds available under the plan to hire or contract with qualified attorneys, financial advisers, or other

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professional or administrative persons that the committee believes are necessary or useful in the administration of the plan.

(e) A plan established under subsection (a) must include appropriate provisions concerning the plan's day to day operation and any other provisions that are appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, online activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

(f) The state is obligated at any particular time only for the current market value of the funding previously made to a plan established under subsection (a).

(g) The state board of finance shall extend the plan established under subsection (a) to any political subdivision that also elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) **or 7(b)(3)** of this chapter.

SECTION 2. IC 5-10-1.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The deferred compensation committee is established. The committee consists of five (5) persons appointed by the state board of finance as follows:

- (1) Each member of the state board of finance shall appoint one (1) member to the committee.
- (2) The remaining two (2) members:
 - (A) must be participants in the state employees' deferred compensation plan;
 - (B) may not be employees of the members of the state board of finance;
 - (C) must be from different political parties; and
 - (D) may not serve for more than two (2) consecutive three (3) year terms.

(b) The deferred compensation committee may annually elect a chairperson and a secretary.

(c) The deferred compensation committee may approve proposed investment products for the state employees' deferred compensation plan.

(d) All amounts deferred under the state employees' deferred compensation plan must be put into a trust for the exclusive benefit of plan participants, as required by Section 457(g) of the Internal Revenue Code. The deferred compensation committee is the trustee of the trust.

(e) The plan shall include appropriate provisions pertaining to its day to day operation providing for methods of electing to defer income,

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methods of changing the amount of income to be deferred, and such other provisions as may be appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, on-line activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

(f) The plan shall provide for the preparation and distribution, from time to time to all eligible employees, of pamphlets describing the plan and outlining the opportunities available to employees under the plan.

(g) The state board of finance shall extend the plan to any political subdivision which elects to utilize the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) **or 7(b)(3)** of this chapter.

(h) At least annually, the deferred compensation committee shall report to the state board of finance on the status of the state employees' deferred compensation plan, including any changes to the plan.

SECTION 3. IC 5-10-1.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Any political subdivision (as defined by IC 36-1-2-13) may establish for its employees a deferred compensation plan. The plan shall be selected by the governing body of the political subdivision, which in the case of a unit subject to IC 36-1-3 shall be done by ordinance. Participation shall be by written agreement between each employee and the governing body of the political subdivision, which agreement provides for the deferral of compensation and subsequent administration of such funds.

(b) For funding such agreements, the governing body of the political subdivision may:

(1) designate one (1) of its agencies or departments to establish and administer such plans and choose such funding as deemed appropriate by the agency or department, which may include more than one (1) funding product; **or**

(2) extend the state employees' deferred compensation plan to employees of the political subdivision, subject to the terms and conditions of the state employees' deferred compensation plan as it is established from time to time; **or**

(3) offer both of the plans described in subdivisions (1) and (2).

(c) This section does not limit the power or authority of any political subdivision to establish and administer other plans deemed appropriate by the governing bodies of such subdivisions, including plans established under section 1(2) of this chapter.

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SECTION 4. IC 5-10-1.1-7.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7.3. (a) Any political subdivision (as defined in IC 36-1-2-13) that elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) **or 7(b)(3)** of this chapter also may elect to participate in the state's defined contribution plan established by section 1.5 of this chapter for the purpose of matching all or a specified portion of the political subdivision's employees' contributions to the deferred compensation plan.

(b) Participation in the state's defined contribution plan described in subsection (a) shall be authorized by the governing body of the political subdivision, which in the case of a unit subject to IC 36-1-3 shall be done by ordinance.

(c) Contributions by a political subdivision to the state's defined contribution plan described in subsection (a) for the purpose of matching all or a specified portion of employee contributions are limited to the amount of appropriations made each year for that purpose.

(d) The political subdivision is obligated at any particular time only for the current market value of the funding previously made to the state's defined contribution plan described in subsection (a).

(e) This section does not limit the power or authority of any political subdivision to establish and administer any other plans considered appropriate by the governing body of the political subdivision, including plans established under section 1(2) of this chapter.

SECTION 5. IC 5-10-1.1-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "state agency" means the following:

- (1) An authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of state government.
- (2) A separate corporate body politic that adopts the plan described in subsection (b).
- (3) State elected officials and their office staff.
- (4) The legislative services agency.
- (5) Legislative staff eligible to participate in the state employees' deferred compensation plan established by section 1 of this chapter.

However, the term does not include a state educational institution (as defined in IC 20-12-0.5-1) or a political subdivision.

(b) The deferred compensation committee shall adopt provisions in a defined contribution plan, under Sections 401(a) and 414(d) of the

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Internal Revenue Code, for the purpose of converting unused excess accrued leave to a monetary contribution for employees of a state agency. These provisions may be part of the plan and trust established under section 1.5(a) of this chapter.

(c) The deferred compensation committee is the trustee of the plan described in subsection (b). The plan must be a qualified plan, as determined by the Internal Revenue Service.

(d) The state personnel department shall adopt rules under IC 4-22-2 that it considers appropriate or necessary to implement this section. The rules adopted by the state personnel department under this section must:

- (1) be consistent with the plan described in subsection (b);
- (2) include provisions concerning:
 - (A) the type and amount of leave that may be converted to a monetary contribution;
 - (B) the conversion formula for valuing any leave that is converted;
 - (C) the manner of employee selection of leave conversion; and
 - (D) the vesting schedule for any leave that is converted; and
- (3) apply to all state agencies.

(e) The rules adopted by the state personnel department under subsection (d) specifying the conversion formula must provide for a conversion rate under which the amount contributed on behalf of a participating employee for a day of leave that is converted under this section is equal to at least sixty percent (60%) of the employee's daily pay as of the date the leave is converted.

(f) The deferred compensation committee may adopt the following:

- (1) Plan provisions governing:
 - (A) the investment of accounts in the plan; and
 - (B) the accounting for converted leave.
- (2) Any other plan provisions that are necessary or appropriate for operation of the plan.

(g) The plan described in subsection (b) may be implemented only if the deferred compensation committee has received from the Internal Revenue Service any rulings or determination letters that the committee considers necessary or appropriate.

(h) To the extent allowed by:

- (1) the Internal Revenue Code; and**
- (2) rules adopted by:**
 - (A) the state personnel department under this section; and**
 - (B) the board of trustees of the public employees' retirement fund under IC 5-10.3-8-14;**

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an employee of a state agency may convert unused excess accrued leave to a monetary contribution under this section and under IC 5-10.3-8-14.

SECTION 6. IC 5-10.3-8-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section applies to employees of the state (as defined in IC 5-10.3-7-1(d)) who are members of the fund.

(b) The board shall adopt provisions to establish a retirement medical benefits account within the fund under Section 401(h) or as a separate fund under another applicable section of the Internal Revenue Code for the purpose of converting unused excess accrued leave to a monetary contribution for an employee of the state to fund on a pretax basis benefits for sickness, accident, hospitalization, and medical expenses for the employee and the spouse and dependents of the employee after the employee's retirement.

(c) The board is the trustee of the account described in subsection (b). The account must be qualified, as determined by the Internal Revenue Service, as a separate account within the fund whose benefits are subordinate to the retirement benefits provided by the fund.

(d) The board may adopt rules under IC 5-10.3-3-8 that it considers appropriate or necessary to implement this section after consulting with the state personnel department. The rules adopted by the board under this section must:

- (1) be consistent with the federal and state law that applies to:
 - (A) the account described in subsection (b); and
 - (B) the fund; and
- (2) include provisions concerning:
 - (A) the type and amount of leave that may be converted to a monetary contribution;
 - (B) the conversion formula for valuing any leave that is converted;
 - (C) the manner of employee selection of leave conversion; and
 - (D) the vesting schedule for any leave that is converted.
- (e) The board may adopt the following:
 - (1) Account provisions governing:
 - (A) the investment of amounts in the account; and
 - (B) the accounting for converted leave.
 - (2) Any other provisions that are necessary or appropriate for operation of the account.

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(f) The account described in subsection (b) may be implemented only if the board has received from the Internal Revenue Service any rulings or determination letters that the board considers necessary or appropriate.

(g) To the extent allowed by:

(1) the Internal Revenue Code; and

(2) rules adopted by:

(A) the board under this section; and

(B) the state personnel department under IC 5-10-1.1-7.5; employees of the state may convert unused excess accrued leave to a monetary contribution under this section and under IC 5-10-1.1-7.5.

SECTION 7. P.L. 126-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: SECTION 1. (a) As used in this SECTION, "PERF board" refers to the public employees' retirement fund board of trustees established by IC 5-10.3-3-1.

(b) As used in this SECTION, "fund" refers to the fund for the defined contribution plan of the legislators' retirement system established by IC 2-3.5-3-2.

(c) Beginning January 1, 2004, the PERF board shall conduct a pilot program concerning:

(1) the implementation of a member's investment selection; and

(2) the crediting of a member's contributions and earnings;

for the fund.

(d) The pilot program referred to in subsection (c) must include the following elements:

(1) Notwithstanding IC 2-3.5-5-3(b)(2), the PERF board shall implement a member's selection under IC 2-3.5-5-3 not later than the next business day following receipt of the member's selection by the PERF board. This date is the effective date of the member's selection.

(2) Notwithstanding IC 2-3.5-5-3(b)(7), all contributions to a member's account in the fund must be allocated under IC 2-3.5-5-3 not later than the last day of the quarter in which the contributions are received and reconciled in accordance with the member's most recent effective direction.

(3) Notwithstanding IC 2-3.5-5-3(c) and IC 2-3.5-5-3(d), when a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member is the market value of the member's investment as of five (5) business days preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date.

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(4) Notwithstanding IC 2-3.5-5-4, contributions to the fund under IC 2-3.5-5-4 must be credited to the fund not later than the last day of the quarter in which the contributions were deducted.

(5) Notwithstanding IC 2-3.5-5-5, the state shall make contributions under IC 2-3.5-5-5 to the fund not later than the last day of each quarter. The contributions must equal twenty percent (20%) of the annual salary received by each participant during that quarter.

(e) Before November 1, 2005, the PERF board shall report to the pension management oversight commission established by IC 2-5-12 the results of the pilot program referred to in subsection (c) and shall recommend proposed legislation if the report includes a finding that the pilot program should be implemented on a permanent basis. If the PERF board recommends implementing the pilot program on a permanent basis, the PERF board shall provide to the pension management oversight commission a schedule to implement the elements of the pilot program on a permanent basis for all funds for which it has responsibility.

(f) This SECTION expires ~~December 31, 2005~~. **July 1, 2006.**

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the deferred compensation committee established by IC 5-10-1.1-4.

(b) As used in this SECTION, "plan" refers to the deferred compensation plan described in IC 5-10-1.1-1.5.

(c) The committee shall adopt a pilot program that enables the employees of at least one (1) branch of state government to make the first conversion of unused excess accrued leave to a monetary contribution under the plan not later than December 31, 2005.

(d) The auditor of state shall provide for the administration of the pilot program under IC 5-10-1.1-5.

(e) The provisions of IC 5-10-1.1-7.5 apply to the pilot program described in subsection (c).

(f) This SECTION expires on the earlier of:

(1) the date the leave conversion provisions of the plan are fully implemented on a permanent basis for all state agencies (as defined in IC 5-10-1.1-7.5(a)); or

(2) July 1, 2010.

SECTION 9. [EFFECTIVE JULY 1, 2005] (a) A member of the Indiana state teachers' retirement fund (referred to in this SECTION as "fund") who is:

(1) receiving a benefit from the fund; and

(2) a party in an action for dissolution of marriage in which a

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court issues an order that prohibits the fund member's designated beneficiary from receiving any of the fund member's benefit from the fund;
may, before January 1, 2006, make the election described in subsection (b).

(b) A fund member described in subsection (a) may elect to:

- (1) change the fund member's designated beneficiary or form of benefit under IC 5-10.2-4-7(b); and
- (2) receive an actuarially adjusted and recalculated benefit for the remainder of:

(A) the fund member's life; or

(B) the fund member's life and the life of the newly designated beneficiary.

(c) A fund member making the election under subsection (b) may not elect to change to a five (5) year guaranteed form of benefit.

(d) If a fund member elects a benefit under subsection (b)(2)(B), the fund member must indicate whether the newly designated beneficiary's benefit will equal:

- (1) the fund member's full recalculated retirement benefit;
- (2) two-thirds (2/3) of the fund member's recalculated retirement benefit; or
- (3) one-half (1/2) of the fund member's recalculated retirement benefit.

(e) The fund member bears the cost of recalculating a benefit under subsection (b)(2), and the cost shall be included in the actuarial adjustment.

(f) This SECTION expires January 1, 2006.

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the state personnel department established by IC 4-15-1.8-2.

(b) Notwithstanding IC 5-10-1.1-7.5(d), the department shall adopt any rules to implement IC 5-10-1.1-7.5, as amended by this act, and SECTION 8 of this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1.

(c) Any rules adopted under this SECTION must be adopted so that employees of at least one (1) branch of state government are able to make the first conversion of unused excess accrued leave not later than December 31, 2005.

(d) A rule adopted under this SECTION expires on the earlier of:

- (1) the date rules are adopted by the department under

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IC 4-22-2-24 through IC 4-22-2-36 to implement IC 5-10-1.1-7.5, as amended by this act, for all state agencies (as defined in IC 5-10-1.1-7.5(a)); or

(2) July 1, 2010.

(e) This SECTION expires July 1, 2010.

SECTION 11. [EFFECTIVE JULY 1, 2005] (a) This SECTION applies to a surviving spouse of an employee beneficiary who:

(1) died before July 1, 2005; and

(2) was a member of a retirement plan established under IC 36-8-10-12.

(b) A monthly pension paid under IC 36-8-10-16(c), before its amendment by SEA 611-2005, to a surviving spouse after the date the surviving spouse remarried and before July 1, 2005, shall be treated as properly paid.

(c) The monthly pension of a surviving spouse:

(1) who remarried after December 31, 1989; and

(2) whose monthly pension paid under IC 36-8-10-16(c), before its amendment by SEA 611-2005, ceased on the date of remarriage;

shall be reinstated on July 1, 2005, under IC 36-8-10-16, as amended by SEA 611-2005, SECTION 2, and continue during the life of the surviving spouse.

SECTION 12. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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